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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/656,662

09/05/2003

Vikkie A. Mustad

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07/05/2007

ROSS PRODUCTS DIVISION OF ABBOTT LABORATORIES
DEPARTMENT 108140-DS/1
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EXAMINER

CARR, DEBORAH D

ART UNIT

PAPER NUMBER

1621

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/656,662	Applicant(s) MUSTAD ET AL.	
	Examiner Deborah D. Carr	Art Unit 1621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 9-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1621

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see pages 10-11, filed 20 April 2007, with respect to claim 8 have been fully considered and are persuasive. The 112 rejections of claims 1-8 has been withdrawn.
2. Applicant's arguments filed 20 April 2007 regarding claims 1-7 rejected under 35 USC§102(b) have been fully considered but they are not persuasive.

Status of Claims

3. Claims 9-45 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claims. Applicant timely traversed the restriction (election) requirement in Paper Dated. 15 April 2005.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-7 rejected under 35 U.S.C. 102(a) as being clearly anticipated by US Pub. 2004/0062847.

Art Unit: 1621

US Pub.'847 teaches an oil/fat composition containing alpha-linolenic acid, omega-6 fatty acids and omega-9 fatty acids that read on all of the ratios and applicable acids as defined in the dependent claims. See Table 1, col. 3 wherein the amount of fatty acids are as follows: C18:3 n-3 (40.5); C18:1 n-9 (34.5); C18:2 n-6 (14.0), saturated fatty acids (C16:0 & C18:0 - total 10.7).

Applicant's Response

Applicant's have amended the claim to include the limitation "wherein the fatty acid ratios are provided by the combination of total lipids in the lipid system." This limitation was added to distinguish that the instant ratios are not contained only in the monoglycerides component of an oil/fat composition.

Examiner's Response

While monoglycerides may compose 64.2% of the oil/fat composition, 32.0% of the composition contains diglycerides. Applicant is directed to page 2, section [0015] wherein it is stated the diglyceride to be used in the present invention is preferred to have fatty acid constituents similar to those of the monoglycerides. So while the diglyceride content is not listed, based on the disclosure of section [0015] that the diglyceride component mirrors the monoglyceride component, the ratios in Table 1 are being met by the total combination of the fatty acids present in the oil/fat composition.

Art Unit: 1621

Also it should be noted that the instant lipid system is comprised of oils containing a certain amount of fatty acid moieties attached to the glycerol backbone. There is no requirement that the fatty acid moieties have to be distributed evenly among the acylated glycerol backbone, just present in an amount to satisfy the ratios.

The following rejections are deemed proper.

Claim Rejections - 35 USC § 112

6. Claim 8 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for “lipid systems comprising 30-90% flaxseed oil, 0-60% high oleic safflower oil and 0-10% corn”, does not reasonably provide enablement for “lipid system comprises from about 30 to about 90% flaxseed oil, and at least one of high oleic safflower oil and corn oil.” The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make/use the invention commensurate in scope with these claims.

As currently amended, the amounts of the high oleic safflower and corn oil read outside the metes and bounds of the specification. It is specifically shown on page 9 that both corn oil and high oleic safflower oil need to be present in a specific range to obtain the ratios of claim 1.

Art Unit: 1621

7. Claim 1-8 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for “lipid system containing specific ratios of omega-3, omega-6, and omega-9 fatty acids”, does not reasonably provide enablement for “wherein the fatty acid ratios are provided by the combination of total lipids in the lipid system.” The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make/use the invention commensurate in scope with these claims.

The fatty acid ratios are based on the total amount of fatty acids in the lipid system not the total lipids. Therefore applicants are claiming the instant invention in a way that is not enabled.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action.

Art Unit: 1621

In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah D. Carr whose telephone number is 571-272-0637.

The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DEBORAH D. CARR
PRIMARY EXAMINER

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